

STATE BAR OF CALIFORNIA
COMMISSION FOR THE REVISION OF THE RULES
OF PROFESSIONAL CONDUCT

OPEN SESSION AGENDA

Friday, February 4, 2005
(9:15 am - 12:30 and 1:00 - 5:00 pm)

SF–State Bar Office
180 Howard Street
9th Floor – Admissions Dept.
San Francisco, CA 94105

[NOTE RE MEETING SITE: For members of the public, the open session portion of this meeting also can be accessed by tele-conference. This meeting will not be available by video-conference. Members of the public who wish to join this meeting by tele-conference are asked to call Audrey Hollins at 415-538-2167, no later than Wednesday, February 2nd.]

I. APPROVAL OF OPEN SESSION ACTION SUMMARY FROM THE AUGUST 27 & 28, 2004 & OCTOBER 8, 2004 MEETINGS

(Draft open action summary for the August 27 & 28, 2004 & October 8, 2004 meetings enclosed.) **[pages 1 – 70]**

II. REMARKS OF CHAIR

A. Chair's Report

(The Chair will provide an oral report on administrative, procedural, or other informational matters.)

B. Staff's Report

(Staff will report on the activities of COPRAC and the Board of Governors.)

III. **MATTERS FOR ACTION** (Name with asterisk is lead drafter, underline indicates a newly added co-drafter.)

*Foy
Julien
Peck

- A. **Report on the Board Referral of Trust and Estates Section Legislative Proposal 2005-02 (re Impaired Clients) [ABA MR 1.14]**
(Materials enclosed.) **[pages 71 – 98]**

*Tuft
Martinez
Peck

- B. **Law Firm Definition** (previously considered as part of proposed new rule 1-310X and proposed amended rule 2-200)
(Materials enclosed – Mark Tuft’s January 18, 2005 memo, Kevin Mohr’s e-mail compilations prepared for October 8, 2004 meeting; and materials circulated for October 8, 2004 and November 19, 2004 meetings. As previously indicated, only issues raised in comments from Jerry Sapiro dated October 6, 2004 and from Kurt Melchior dated October 3, 2004 (see enclosed e-mail compilation), and any issues raised by the codrafters in the October agenda materials, will be considered.) **[pages 99 – 116]**

*Ruvolo
Tuft
Vapnek
Mohr

- C. **Counterpart to Rule 1-310X [ABA MR 5.1/5.4] re Lawyers Influencing Lawyers**
(Materials enclosed – draft prepared by Nace Ruvolo dated 9/20/04, comment thereto from Mark Tuft dated 11/15/04, and reply from Nace Ruvolo dated 11/17/04; see also, enclosed comment from Kurt Melchior dated 1/17/05.) **[pages 117 – 128]**

*Tuft
Martinez
Peck

- D. **Consideration of Rule 5.4. Professional Independence of a Lawyer (aka Rule 1-310X)**
(Materials enclosed – materials circulated for November 19, 2004 meeting.) **[pages 129 – 144]**

*Ruvolo
Foy
Julien

E. Consideration of Rule 3-120 [ABA MR 1.8(j)]. Sexual Relations With Client

(Materials enclosed – updated e-mail compilation (see Kurt Melchior’s 1/18/05 comment, Nace Ruvolo ‘s 11/24/04 comment, Jerry Sapiro’s 8/24/04 comment, OCTC comment no. 2001-01a, and COPRAC comment no. 2004-47); and, materials circulated for December 10, 2004 meeting. **[pages 145 – 166]**)

*Tuft
Foy
Melchior

F. Consideration of Rule 3-210 [ABA MR 1.2(d)]. Advising the Violation of Law

(Materials enclosed – materials circulated for December 10, 2004 meeting; materials distributed on e-list on 11/18/04, including excerpt from Kurt Melchior’s 11/3/04 e-mail; and materials distributed on e-list on 12/7/04, including staff prepared rule history and Ethics Hotline Staff recommendations.) **[pages 167 – 180]**

*Vapnek
Peck
Ruvolo

G. Consideration of Rule 3-110 [ABA MR 1.1]. Failing to Act Competently

(Materials enclosed – draft proposed California Rule 1.1; comparison version of proposed new Rule 1.1 to current Rule 3-110; comparison of proposed new Rule 1.1 to current ABA MR 1.1; and collection of materials primarily circulated with 8/27&28/04 agenda package.) **[pages 181 – 214]**

*Melchior
Julien
Tuft

H. Consideration of Proposed New Rule or Amended Rule Prohibiting a Request or Agreement to Waive the Attorney-Client Privilege and the Relationship of Such a New Rule to Rule 3-110 (Agenda Item III.G Above)

(Materials enclosed – Kurt Melchior’s January 17, 2005 memo; Mark Tuft’s January 18, 2005 memo; and materials from Randy concerning new ABA Task Force on Attorney Client Privilege.) **[pages 215 – 226]**

Lamport
Tuft
Voogd

I. Consideration of Rule 3-300 [ABA MR 1.8(a)]. Avoiding Interests Adverse to a Client

(Materials enclosed – materials circulated for October 8, 2004 meeting; and Kevin Mohr’s e-mail compilation dated 10/5/04. Only the concerns expressed in that compilation, together with any issues raised by the co-drafters in the October agenda materials, will be considered.)

[pages 227 – 240]

*Voogd
Tuft
Ruvolo

J. Consideration of Rule 3-200 [ABA MR 3.1 and 3.2]. Prohibited Objectives of Employment

(Materials enclosed – Mark Tuft’s January 18, 2005 memo; Tony Voogd’s November 28, 2004 memo circulated by e-mail; and materials circulated for November 19, 2004 meeting. As indicated in the assignment agenda and covering memo, the chair may deem MR 3.1 and the comments relating thereto as adopted by the Commission. ABA MR 3.2 is to be separately considered under this agenda item.) **[pages 241 – 262]**

*Lamport
Julien
Vapnek

K. Consideration of Rule 2-200. Financial Arrangements Among Lawyers

(Materials to be distributed prior to meeting. In addition to the issues discussed at the October 8th meeting, consider Rule 2-200 in relation to definition of “Law Firm,” agenda item III.B. above.)

STATE BAR OF CALIFORNIA
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CLOSED SESSION AGENDA*

Friday, February 4, 2004
(9:00 a.m - 9:15 a.m.)

SF–State Bar Office
180 Howard Street
9th Floor – Admissions Dept.
San Francisco, CA 94105

- I. **APPROVAL OF CLOSED SESSION SUMMARY FROM THE AUGUST 27 & 28, 2004 AND OCTOBER 8, 2004 MEETINGS**
(Draft closed session action summary for the August 27 & 28, 2004 & October 8, 2004 meetings enclosed.) *[pages 1 – 4]*

- II. **ADVICE OF COUNSEL ON OPEN SESSION AGENDA ITEMS**

- III. **ACTION ITEMS.**
 - A. **Emergency action items, if any.**

* Closed pursuant to Article 3, Section 2, Subdivision (b), Rules Governing Open Meetings, Closed Sessions and Records of the Board of Governors.